Case No.: S0200CV201900442
HON. JOHN F KELLIHER

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SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCHISE

DEBORAH TREBILCOCK, Personal Representative of the ESTATE OF STEPHEN TREBILCOCK, on behalf of the ESTATE OF STEPHEN TREBILCOCK, deceased; and DEBORAH TREBILCOCK, Personal Representative, for and on behalf of STEPHEN TREBILCOCK'S statutory beneficiaries pursuant to A.R.S. § 12-612(A), Plaintiff, vs. LIFE CARE CENTERS OF AMERICA, INC., a Tennessee corporation, d/b/a LIFE CARE CENTER OF SIERRA VISTA, Matt Combe Administrator; and JOHN DOES 1–200, Defendants.	Case No.: **COMPLAINT** Civil: 1) Negligence 2) Vulnerable Adult Abuse/Neglect/ Exploitation under the Adult Protective Services Act (A.R.S. § 46-455) 3) Wrongful Death

Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter under a) Ariz. Const. article VI, § 14; b) A.R.S. § 46-455(B); and c) Ariz. R. Civ. P. 4.2(a).

2. Because Defendants have caused events to occur in Cochise County by which the causes of action alleged herein have arisen, proper venue lies with this Court.

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THE PARTIES

PLAINTIFF

3. At all relevant times, Stephen Trebilcock was a resident of Cochise County, Arizona, was over the age of 18, and suffered from physical and mental impairments which made him unable to protect himself from abuse, neglect, and exploitation. Stephen Trebilcock was therefore a vulnerable adult under A.R.S. § 46-451(A)(9).

4. Stephen Trebilcock's injuries were caused by events that occurred in Cochise County, Arizona.

5. Deborah Trebilcock is the wife of Stephen Trebilcock and is Personal Representative of his Estate for purposes of this litigation.

6. As Personal Representative, Deborah Trebilcock brings this action on behalf of Stephen Trebilcock for injuries, pain and suffering, and other economic and non-economic damages sustained by Stephen Trebilcock prior to his death. Deborah Trebilcock also brings this action on behalf of the statutory beneficiaries of Stephen Trebilcock as set forth in A.R.S. § 12-612.

DEFENDANTS

7. At all relevant times, Defendants Life Care Centers of America, Inc., a Tennessee corporation, and John Does 1 through 100 (hereinafter "Management Defendants") were licensed and doing business as Life Care Center of Sierra Vista in Sierra Vista, Arizona (hereinafter "Facility"). Management Defendants owned, operated, and/or managed Facility, and furthermore participated in, authorized, and/or directed the conduct of Facility and its respective agents and employees.

8. At all relevant times, Facility was in the business of providing long-term care as a 24-hour nursing facility and as such was subject to the requirements of all corresponding statutes and regulations governing the operation of 24-hour nursing facilities.

9. At all relevant times, Facility was certified as a nursing facility for purposes of the Arizona Health Care Cost Containment System and the Arizona Long-Term Care System.

10. Defendants Matt Combe and John Does 101 through 110 are licensed as Nursing Care Institution Administrators by the Arizona Board of Examiners of Nursing Care

Institution Administrators and Adult Care Home Managers. During all relevant times, they were employed as Administrators of Facility.

11. At all relevant times, Matt Combe was and is an Arizona resident.

12. John Does 111 through 200 are those persons and/or entities whose conduct caused the injuries alleged herein to Stephen Trebilcock.

13. John Does 1 through 200 are persons and/or entities whose relationships to the named Defendants, or whose acts or omissions, give rise to legal responsibility for the damages incurred by Stephen Trebilcock, but whose true identities, at the present time, are unknown to Plaintiff. These persons are hereby notified of Plaintiff's intention to join them as defendants if and when additional investigation or discovery reveals the appropriateness of such joinder. (Hereinafter "Defendants" refers to Facility, Management Defendants, Matt Combe, and John Does 1 through 200).

DIRECT AND VICARIOUS LIABILITY

14. At all relevant times, Facility and Management Defendants owned, operated, and/or managed Facility, and furthermore participated in, authorized, and/or directed the conduct of Facility and its respective agents and employees. Facility and Management Defendants are therefore directly liable for their own negligence, recklessness, and other tortious conduct in the hiring and management of their agents and employees, as is more fully alleged herein.

15. At all relevant times, Facility and Management Defendants provided to Facility management services governing and controlling the nursing care and custodial services provided to Stephen Trebilcock, and by virtue of their management and control over Facility, Facility and Management Defendants voluntarily and intentionally assumed responsibility for and provided supervisory services for the nursing care and custodial services provided to Stephen Trebilcock while he was a resident at Facility.

16. Facility and Management Defendants, through their managers, directors, presidents, vice-presidents, executive officers, and other agents, directly oversaw, managed, and/or controlled all aspects of the operation and management of Facility, including budget,

staffing, staff training, policy and procedures manual(s), licensing, accounts payable, accounts receivable, development and leasing, general accounting, cash management, pricing, reimbursement, capitalization, and profit and loss margins.

17. Facility and Management Defendants, through their managers, directors, presidents, vice-presidents, executive officers, and other agents created budgets, policies and procedures that Facility employees were required to implement and follow.

18. Facility and Management Defendants employed all of those persons who attended to and provided care to Stephen Trebilcock while he was a resident at Facility, and employed those persons in management and supervisory positions who directed the operations of Facility, all of whom were acting within the course and scope of their employment, during Stephen Trebilcock's residency.

19. Facility and Management Defendants, through their administrators, directors, and managing agents, complied with and ratified all conduct of Facility alleged herein.

20. At all relevant times, Facility and Management Defendants were the knowing agents and/or alter-egos of one another, inclusive, and Facility and Management Defendants' officers, directors, and managing agents directed, approved, and/or ratified the conduct of each of the other Facility and Management Defendants' officers, agents and employees, and are therefore vicariously liable for the acts and/or omissions of their co-defendants, their agents, and employees, as is more fully herein alleged. Moreover, at all relevant times, all Facility and Management Defendants were acting within the course and scope of their employment.

21. Defendants' tortious acts and omissions, as alleged herein, were done in concert with each other and pursuant to a common design and agreement to accomplish a particular result: maximizing profits by operating Facility in such a manner that Facility was underfunded and understaffed. Moreover, Facility and Management Defendants aided and abetted each other in accomplishing the acts and omissions alleged herein.

22. Defendants, by their acts and omissions as alleged herein, operated under an agreement, with a common purpose and community of interest, with an equal right of control, and subject to participation in profits and losses, as further alleged herein, such that they

operated a joint enterprise or joint venture, subjecting each of them to liability for the acts and omissions of each other.

FACTUAL SUMMARY/PLAINTIFF'S INJURIES

23. On approximately December 30, 2017, Stephen Trebilcock was admitted as a resident to Facility and placed under the care of Defendants and their employees. He remained a resident at Facility until approximately January 11, 2018.

24. Defendants knew that Stephen Trebilcock was in a compromised physical and mental state due to his medical history, which included Type 2 diabetes, asthma, hypertension, chronic pain, hypothyroidism, cardiac disease, stomach ulcers, severe bilateral knee arthritis, a left knee replacement, and an insertion of a pacemaker defibrillator.

25. As a result of Stephen Trebilcock's condition, he required supervision, close monitoring, and medical attention to ensure his health, safety, and wellbeing.

26. Defendants knew that because of his physical and mental state Stephen Trebilcock was dependent on them for nursing services.

27. Defendants knew that because of Stephen Trebilcock's physical and mental state he was dependent on them for his activities of daily living.

28. Despite Defendants' knowledge of Stephen Trebilcock's risk for skin breakdown, they failed to properly assess, monitor, and protect him from the development and worsening of abrasions, sores, and tears, and he in fact suffered the development and worsening of abrasions, sores, and tears.

29. Despite Defendants' knowledge and awareness of his needs, they did not provide Stephen Trebilcock the attention and care necessary to prevent him from suffering falls, and he did in fact suffer at least two falls, resulting in blunt force trauma to his head and Intraparenchymal hemorrhage and ultimately causing his death.

30. Despite Defendants' knowledge that Stephen Trebilcock needed assistance with eating and dietary planning, they failed to provide this assistance, putting Stephen Trebilcock at risk for malnutrition and hypoglycemia, which conditions he in fact suffered.

31. Stephen Trebilcock's injuries were entirely preventable had Defendants simply provided Facility sufficient staff in number and training to provide him the amount and level of care that laws and regulations required.

32. Stephen Trebilcock's injuries, including death, would not have occurred but for the complete willful disregard by Defendants of their duties owed to Stephen Trebilcock.

33. Stephen Trebilcock was subjected to pain and suffering and eventually died on January 17, 2018 as a result of the inadequate care and treatment he suffered at Defendants' hands.

DEFENDANTS' KNOWLEDGE, DUTIES, AND WRONGFUL CONDUCT

34. During Stephen Trebilcock's residency at Facility, Defendants knew or had reason to know that he was an incapacitated and vulnerable adult under A.R.S. § 46-451.

35. At all relevant times, Defendants held themselves out as being competent and qualified to provide and administer skilled nursing and health care services, including rehabilitation, to their residents, including Stephen Trebilcock. Further, Defendants held themselves out as willing to comply with the appropriate standard of care for health care providers in their respective fields and acted together to provide care as an enterprise as defined by A.R.S. § 46-455.

36. As governing authority for Facility, Facility and Management Defendants were responsible for the organization and administration of Facility, and had duties including (a) ensuring that Facility complied with applicable statutes and regulations; (b) adopting policies and procedures for Facility; and (c) appointing an administrator to manage Facility.

37. At all times mentioned herein, Defendants had a duty to employ sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial wellbeing of Stephen Trebilcock, as determined by appropriately prepared resident assessments and individual plans of care.

38. At all times mentioned herein, Defendants had a duty to provide for the safety of residents, including Stephen Trebilcock, particularly residents who were impaired and in need of special precautions for their safety, by providing each resident, including Stephen Trebilcock, adequate supervision, assistance, nutrition, and nursing and medical intervention

to prevent injury or deterioration of health, as well as to provide curative and restorative care as needed and as prescribed by physicians.

39. As Administrators for Facility, Defendants Matt Combe and John Does 101 through 110 had duties including (a) appointing and supervising a medical director to be responsible for resident medical care at Facility; (b) appointing and supervising a Director of Nursing for Facility; (c) appointing and supervising a food service supervisor for Facility; (d) supervising and evaluating staff performance at Facility; (e) developing and implementing written policies and procedures for nursing services, personnel, staff orientation and in-service training, admission and discharge of residents, safety and emergency plans, and quality management plans for Facility; and (f) investigating and reporting all incidents involving resident neglect or abuse to the Office of Long Term Care Licensure and Adult Protective Services, if required by A.R.S. § 46-454, and preventing further neglect or abuse during the course of any investigation.

40. Defendants were responsible for providing nursing care to Stephen Trebilcock while he was a resident at Facility, and owed Stephen Trebilcock a variety of duties under relevant statutes, regulations, and the common law.

41. Among the duties Defendants and their employees owed to Stephen Trebilcock but failed to perform was the duty to provide reasonable and appropriate health care services in accordance with recognized standards of care.

42. Among the duties Defendants and their employees owed to Stephen Trebilcock but failed to perform was the duty to provide reasonable care to prevent him from suffering falls.

43. Among the duties Defendants and their employees owed to Stephen Trebilcock but failed to perform was the duty to provide reasonable care to prevent skin breakdown.

44. Among the duties Defendants and their employees owed to Stephen Trebilcock but failed to perform was the duty to provide appropriate nutritional care.

45. Among the duties Defendants and their employees owed to Stephen Trebilcock but failed to perform were the duties to adequately screen, evaluate, check references of, test competence of, and use reasonable care in selecting management, nurses, nursing assistants,

and other personnel to work at Facility.

46. Among the duties Defendants and their employees owed to Stephen Trebilcock but failed to perform was the duty to employ and train sufficient nurses, nursing assistants, and other personnel to provide adequate care for Stephen Trebilcock.

47. Among the duties Defendants and their employees owed to Stephen Trebilcock but failed to perform were the duties to provide adequate staff to monitor Stephen Trebilcock's condition and to adequately train, motivate, and supervise that staff in performing assessments of his condition and planning for his care and safety needs.

48. Among the duties Defendants and their employees owed to Stephen Trebilcock but failed to perform was the duty to create and maintain accurate records of Stephen Trebilcock's, condition, progress, and treatment.

49. Among the duties Defendants and their employees owed to Stephen Trebilcock but failed to perform was the duty to appropriately chart information concerning Stephen Trebilcock's condition, assessments, care planning, history, and monitoring so as to enhance his progress and wellbeing.

50. Among the duties Defendants and their employees owed to Stephen Trebilcock but failed to perform was the duty to follow orders and recommendations of physicians in providing care and safety management to Stephen Trebilcock.

51. Among the duties Defendants and their employees owed to Stephen Trebilcock but failed to perform was the duty to notify physicians and emergency services as reasonably necessary to seek a physician's consultation and treatment, and to provide the physicians with adequate information to enable them to make informed decisions concerning Stephen Trebilcock's condition and course of treatment so that appropriate orders could be made for his care and safety.

52. Among the duties Defendants and their employees owed to Stephen Trebilcock but failed to perform was the duty to monitor and properly assess his condition, from initial assessment, ongoing assessment, through the development of a timely care plan and any revisions thereto, and to monitor his general health and safety, nutritional needs, and to report to physicians any failure to improve under the therapies ordered.

53. Stephen Trebilcock's injuries as alleged herein would not have occurred but for the utter and complete willful disregard by Defendants of their duties to Stephen Trebilcock.

54. Defendants, acting through their agents and employees, failed to properly assess and diagnose the condition of Stephen Trebilcock, or develop an appropriate care plan to enhance his health and to address those conditions from which he suffered.

55. Defendants, acting through their agents and employees, failed to adequately follow physicians' orders concerning Stephen Trebilcock's treatment and failed to properly monitor and assess his condition and communicate the same to his physician so that appropriate orders could be taken and later implemented into his plan of care.

56. Defendants allowed Stephen Trebilcock to suffer in a hazardous environment, and he was therefore forced to suffer poor quality of life.

57. Defendants owed a duty to Stephen Trebilcock, yet failed to provide services and care needs for his in such a manner and in such an environment as to promote maintenance or enhancement of his quality of life.

58. Defendants owed a duty to Stephen Trebilcock, yet failed to provide services and activities and failed to operate, own, manage, control, and/or administer Facility in a manner enabling him to attain or maintain the highest practicable physical, mental, and psychosocial wellbeing possible, in accordance with a written plan of care.

59. Defendants owed a duty to Stephen Trebilcock, yet failed to provide services by sufficient numbers of personnel on a 24-hour basis to provide care to him in accordance with resident care plans.

60. Defendants owed a duty to Stephen Trebilcock, yet failed to operate and provide services in compliance with all applicable laws, regulations, and codes, and with accepted standards and principles that apply to those providing services in a skilled nursing facility.

61. Defendants owed a duty to Stephen Trebilcock, yet failed to ensure that the nurse's aides or any other staff members providing direct care were able to demonstrate competency in skills and techniques necessary to care for residents' care needs, including Stephen Trebilcock's, as identified through residents' assessments and respective plans of care.

62. Defendants, through Facility administrators, owed a duty to their residents, including Stephen Trebilcock, yet failed to ensure that Facility's policies and procedures were established, documented, and implemented that covered abuse of residents, job descriptions, qualifications, duties, orientation, and in-service education for each staff member, resident rights, quality management and incident documentation, nursing services, dispensation, administration, wound management, fall prevention, disposal of medication and biologicals, infection control, and medical records, including oral, telephonic, and electronic records.

63. Defendants breached all of those duties set forth above with respect to Stephen Trebilcock, a lack of adequate supervision, planning, and training by Defendants in carrying out their responsibilities to Stephen Trebilcock.

64. Defendants' breaches, abuse, and neglect of Stephen Trebilcock also resulted, in part, from a lack of adequate training of and care by nurses, nurse aides, food service supervisors, dieticians, and others attending to the care of Stephen Trebilcock at Facility.

65. Finally, Defendants' breaches, abuse, and neglect of Stephen Trebilcock, all with consequential physical and mental suffering, caused Stephen Trebilcock to suffer injuries at Facility and ultimately caused his death.

66. Defendants knew that upon his admission to Facility, Stephen Trebilcock was in a compromised physical and mental state, as described herein. Further, he was dependent on Defendants for nursing services.

67. Despite Defendants' knowledge of the serious physical, mental, and custodial needs of Stephen Trebilcock, Defendants intentionally admitted into Facility high acuity residents, such as Stephen Trebilcock, who required the most intensive care, one reason being that high acuity residents command a higher rate of income and reimbursement.

68. As part of a plan to maximize profits Defendants intentionally cut costs by failing to adequately train existing or incoming staff to meet the needs of Stephen Trebilcock, and by retaining incompetent service personnel, many of whom were not properly trained or qualified to care for him.

69. Defendants ratified the conduct of each Defendant in that they mandated, were aware of, and/or accepted chronic understaffing and inadequate training at Facility, were

aware of Facility's customary practice of receiving complaints and notices of deficiencies relating to the care of residents, and were aware that such understaffing, inadequate training, and deficiencies led to injury and death to residents.

70. The corporate authorization and enactment alleged herein constituted the mandate, permission, consent, and ratification of Facility's misconduct by Defendants, who had within their power, ability, and discretion to mandate that Facility employ adequate staff in number and training to meet the needs of Stephen Trebilcock.

COUNT ONE

Negligence by All Defendants

71. All allegations in paragraphs 1 through 70 are incorporated by reference.

72. Defendants owed Stephen Trebilcock statutory and regulatory standard of care duties as set forth above.

73. Defendants breached those duties.

74. Defendants' breaches were the direct, actual, legal, and proximate cause of Stephen Trebilcock's injuries and death.

75. But for Defendants' conduct and breaches of duty Stephen Trebilcock would not have suffered the injuries described herein.

76. The injuries suffered by Stephen Trebilcock were foreseeable as Defendants knew or should have known that their conduct, which included underfunding and understaffing Facility, would inevitably lead to the kind of injuries, damages, and ultimately, death, suffered by Stephen Trebilcock.

77. Stephen Trebilcock sustained injuries and damages and ultimately died as a result of Defendants' breaches.

COUNT TWO

Violation of the Adult Protective Services Act (A.R.S. § 46-455) by All Defendants

78. All allegations in paragraphs 1 through 77 are incorporated by reference.

79. At all relevant times, Stephen Trebilcock was unable to make decisions sufficient to prevent his abuse and neglect.

80. At all relevant times, Stephen Trebilcock was unable to protect himself from the abuse and neglect he suffered at the hands of Defendants before his death.

81. Stephen Trebilcock was an incapacitated and vulnerable adult whose life was endangered by Defendants' conduct, for profit nonetheless, constituting neglect, abuse, and exploitation as defined in A.R.S. § 46-451(A).

82. Stephen Trebilcock employed Defendants to provide him 24-hour care, and Defendants therefore assumed a legal duty to provide him with proper care.

83. Defendants and their employees willfully, intentionally, and/or negligently caused or permitted Stephen Trebilcock to be injured and/or to be placed in a situation such that his person or health was in danger, as more fully described above.

84. Stephen Trebilcock was deprived of proper nursing and medical services which led to injuries and harm including skin tears and abrasions, hypoglycemia, malnutrition, and falls. Such substandard care ultimately resulted in Stephen Trebilcock's death.

85. Defendants, by engaging in the conduct alleged herein, made a conscious decision to promote profits instead of providing the legally mandated care that Stephen Trebilcock deserved, and as a result Defendants' actions were oppressive, fraudulent, reckless and/or malicious, i.e., Defendants consciously disregarded the unjustifiable and substantial risk of significant harm to Stephen Trebilcock's health, safety and welfare.

86. The acts and/or omissions of Defendants constitute a breach of the aforementioned duties and are a deviation from the applicable standard of care in reckless disregard of the needs of Stephen Trebilcock, constituting abuse and neglect of a vulnerable adult, giving rise to a cause of action under A.R.S. § 46-455, and justifying an award of compensatory and exemplary damages, attorneys' fees, and related expenses.

87. As a direct, actual, legal, and proximate cause of Defendants' conduct, Stephen Trebilcock suffered unjustifiable and substantial physical and mental suffering.

88. The aforementioned breaches, abuse, and neglect are representative of a pattern of abuse and neglect of incapacitated and vulnerable adults as evidenced by previous incidents, lack of appropriate staffing, and ongoing patterns of abuse and/or neglect of residents at Facility, including Stephen Trebilcock, thereby justifying investigation by this

Court and Deborah Trebilcock into the operations and patterns of abuse and neglect of residents and other wrongdoing, and justifying an award of damages, both compensatory and punitive, and such other penalties, injunctions, and orders as the Court deems appropriate.

COUNT THREE

Wrongful Death by All Defendants

89. All allegations in paragraphs 1 through 88 are incorporated by reference.

90. Deborah Trebilcock is the loving wife of Stephen Trebilcock. Stephen Trebilcock had loving children who survived him.

91. As a proximate result of the conduct as more particularly alleged above perpetrated by Defendants, Stephen Trebilcock died on January 17, 2018.

92. Prior to his death, his wife and children enjoyed the love, society, comfort, and attention of Stephen Trebilcock.

93. As a proximate result of the negligent acts of Defendants, which caused the death of Stephen Trebilcock, his statutory beneficiaries sustained pecuniary loss of the society, comfort, attention, and love of Stephen Trebilcock in a sum according to proof at trial.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment and damages against all Defendants as follows:

1. For general damages according to proof;
2. For special damages according to proof;
3. For attorney fees;
4. For punitive and exemplary damages;
5. For costs of suit; and

For such other and further relief as the Court deems just and proper.

Dated: September 17, 2019

BOSSIE, REILLY & OH, P.C.

By: */s/ Mary Ellen Reilly*
Mary Ellen Reilly
Melanie L. Bossie
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